

NO. 96-05323-M

AZAM ANWAR, M.D., Individually
and on behalf of ENDOVASCULAR
SUPPORT SYSTEMS, INC., and
BENITO HIDALGO, Individually
and on behalf of ENDOVASCULAR
SUPPORT SYSTEMS, INC., a
California Corporation,

Plaintiffs,

v.

ARTERIAL VASCULAR ENGINEERING,
INC., a Delaware Corporation,
SIMON H. STERTZER, M.D., GERALD
DORROS, M.D., JOHN MILLER
and BRADLEY JENDERSEE,

Defendants.

§ IN THE DISTRICT COURT OF

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DALLAS COUNTY, TEXAS

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§ 298TH JUDICIAL DISTRICT

PLAINTIFF AZAM ANWAR, M.D.'S FIRST AMENDED OBJECTIONS AND ANSWERS
TO DEFENDANT JOHN MILLER'S SECOND SET OF INTERROGATORIES

In accordance with the Special Master's rulings at the March 7, 1998 hearing, and pursuant to Rules 166b and 168 of the Texas Rules of Civil Procedure, Plaintiff Azam Anwar, M.D. ("Anwar") timely submits the following amended objections and answers to Defendant John Miller's Second Set of Interrogatories.

SPECIFIC OBJECTIONS AND ANSWERS

INTERROGATORY NO 1:

For each request for admission in Defendants' First Set of Requests for Admission to Plaintiff Azam Anwar, M.D. that you deny in whole or in part, describe the factual basis for your denial.

ANSWER: The defendants served a total of 366 separate requests for admission on Anwar, and now inappropriately demand that he set forth the factual basis for each of his denials to the 366 separate requests. Anwar objects to this Interrogatory because setting forth the factual basis for each of his denials to potentially 366 separate requests for admission is overly broad, unduly burdensome, harassing, exceeds the permissible scope of discovery allowed by Rule 168 of the Texas Rules of Civil Procedure because it necessarily requires more than thirty answers to the 366 separate requests served, seeks information that is neither relevant to the subject matter in the pending action nor reasonably calculated to lead to the discovery of admissible evidence, seeks confidential and proprietary information, invades Anwar's privacy rights, and seeks to invade the attorney-client, work product, party communication and consulting expert privileges. Anwar further objects to this Interrogatory because defendants made no effort to tailor their requests for admission to each individual plaintiff, numerous requests thus ask Anwar to admit facts solely within Hidalgo's knowledge, and more egregiously, many of defendants' requests ask Anwar to admit facts solely within defendants' knowledge or from defendants' own documents. Moreover, these requests require knowledge of facts known or documents produced by third parties. Even more requests are repetitive of topics covered during the multiple days of deposition testimony given by Anwar in this lawsuit. In short, to properly respond to this Interrogatory, Anwar would be forced to review the more than two hundred fifty thousand pages of documents produced by defendants, the more than twenty thousand pages of documents produced by third parties, and the deposition testimony given by more than thirty witnesses in this case. This would impose an intolerable burden on Anwar.

Subject to and without waiving these objections, Anwar will answer as to the thirty requests for admission identified in Mark Mathie's letter dated March 8, 1998, which are as follows:

28. Admit that during the telephone conversation between April 23 and May 27, 1993, Anwar told Stertzer that he was in favor of the sale of substantially all of ESS's assets to PET at the May 27, 1993 meeting.

RESPONSE: Anwar denied this request because the request mischaracterizes the nature of the conversation in question and leaves out details, of that conversation, that are necessary for an accurate characterization of the conversation.

29. Admit that during the telephone conversation occurring between April 23 and May 27, 1993, Anwar gave Stertzer Anwar's proxy to vote in favor of the sale of substantially all of ESS's assets to PET at the May 27, 1993 meeting.

RESPONSE: Anwar denied this request because Anwar did not send his proxy until after the May 27, 1993 meeting.

30. Admit during the telephone conversation occurring between April 23 and May 27, 1993, Anwar told Stertzer that he would send Stertzer his written proxy reflecting his decision to vote in favor of the sale at the May 27, 1993 meeting.

RESPONSE: Anwar denied this request because the request mischaracterizes the nature of the conversation in question and leaves out details, of that conversation, that are necessary for an accurate characterization of the conversation.

44. Admit that before exchanging his ESS shares for AVE shares, Anwar did not speak with Stertzer regarding the exchange.

RESPONSE: Anwar denied this request because he did have such a conversation with Stertzer.

46. Admit that before exchanging his ESS shares for AVE shares, Anwar did not speak with Jendersee regarding the exchange.

RESPONSE: Anwar denied this request because he did have such a conversation with Jendersee.

106. Admit that Boneau was the sole inventor of the invention embodied in U.S. Patent No. 5,292,331.

RESPONSE: For purposes of this answer, Anwar assumes that the Boneau stent is the invention embodied in U.S. Patent No. 5,292,331. Based on this assumption, Anwar denied this request because he played a role in the development of the Boneau stent by authoring articles and abstracts regarding the stent, and also having input regarding the stent design. Moreover, Anwar denied this request because he understands that Hidalgo played an integral role in the development of the Boneau stent.

133. Admit that the royalty rate in the Purchase and Sale Agreement between ESS and PET was fair to ESS.

RESPONSE: Anwar denied this request because he believes that the transaction was unfair.

137. Admit that Anwar could have requested additional AVE shares in exchange for his ESS shares but did not.

RESPONSE: Anwar denied this request because Miller told Anwar the number of shares that AVE was willing to provide Anwar.

145. Admit that Anwar agreed to exchange his ESS shares for AVE shares in June 1993.

RESPONSE: Anwar denied this request because he did not exchange his shares until November 1994.

162. Admit that Anwar is not the inventor or co-inventor of the Boneau stent.

RESPONSE: Anwar denied this request because Anwar played a role in the development of the Boneau stent by authoring articles and abstracts regarding the stent, and also having input regarding the stent design.

180. Admit that ESS did not have the technical resources to develop and bring to market the Boneau stent.

RESPONSE: Anwar denied this request because if Stertzer, Dorros, Miller, and Jendersee had put the same financial and technical efforts into ESS that they put into AVE, ESS could have been able to develop and bring to market the Boneau stent. Instead, the defendants channeled their efforts into appropriating the Boneau stent to their own benefit at the expense of the plaintiffs.

181. Admit that ESS did not have the manpower to develop and bring to market the Boneau stent.

RESPONSE: Anwar denied this request because if Stertzer, Dorros, Miller, and Jendersee had put the same financial and technical efforts into ESS that they put into AVE, ESS could have been able to develop and bring to market the Boneau stent. Instead, the defendants channeled their efforts into appropriating the Boneau stent to their own benefit at the expense of the plaintiffs.

184. Admit that ESS did not have the financial resources to develop and bring to market the Boneau stent.

RESPONSE: Anwar denied this request because if Stertzer, Dorros, Miller, and Jendersee had put the same financial and technical efforts into ESS that they put into AVE, ESS could have been able to develop and bring to market the Boneau stent. Instead, the

defendants channeled their efforts into appropriating the Boneau stent to their own benefit at the expense of the plaintiffs.

185. Admit that Anwar had all material knowledge available at the time of the ESS-PET Purchase and Sale Agreement regarding the medical viability and efficacy of coronary stent technology.

RESPONSE: Anwar objects to this request because it is vague, ambiguous, overly broad, unduly burdensome, and calls for a legal conclusion. Subject to and without waiving these objections, Anwar denied this request because Stertzer has testified that he was the most knowledgeable man in America about the stent and obviously had superior knowledge to Anwar.

186. Admit that Anwar had all material knowledge available at the time of the ESS-PET Purchase and Sale Agreement regarding the medical viability and efficacy of the Boneau stent.

RESPONSE: Anwar objects to this request because it is vague, ambiguous, overly broad, unduly burdensome, and calls for a legal conclusion. Subject to and without waiving these objections, Anwar denied this request because Stertzer has testified that he was the most knowledgeable man in America about the stent and obviously had superior knowledge to Anwar.

190. Admit that AVE disclosed all material information to Anwar regarding the ESS stent as of July 1993.

RESPONSE: Anwar objects to this request because it is vague, ambiguous, overly broad, unduly burdensome, and calls for a legal conclusion. Subject to and without waiving these objections, Anwar denied this request because discovery has revealed that defendants had material knowledge that they failed to disclose.

191. Admit that Dorros did not make any representation to Anwar that Anwar relied upon in connection with agreeing to his exchange of ESS shares for AVE shares.

RESPONSE: Anwar denied this request because, although Dorros did not make any such representations directly to Anwar, he was in communication with the other defendants at the time and may have participated in the misrepresentation process that took place.

192. Admit that Stertzner did not make any representation to Anwar that Anwar relied upon in connection with agreeing to his exchange of ESS shares for AVE shares.

RESPONSE: Anwar denied this request because Stertzner did make such representations.

198. Admit that Stertzner was not elected or appointed an officer of ESS.

RESPONSE: Anwar denied this request because Stertzner has sent out correspondence as the treasurer of ESS, and functioned as an officer of ESS by running the affairs of the company.

229. Admit that ESS did not have the resources to appeal the cease and desist letter.

RESPONSE: Anwar objects to this request because it is vague, ambiguous, and unduly burdensome. Subject to and without waiving these objections, Anwar denied this request because if Stertzner, Dorros, Miller, and Jendersee had put the same financial and technical resources into ESS that they put into AVE, ESS could have been able to appeal the cease and desist letter from the FDA. Instead, the defendants channeled their efforts into appropriating the Boneau stent to their own benefit at the expense of the plaintiffs.

230. Admit that ESS did not have the financial resources to pay for the patent appeal regarding U.S. Patent No. 5,292,331.

RESPONSE: Anwar objects to this request because it is vague, ambiguous, and unduly burdensome. Subject to and without waiving these objections, Anwar denied this

request because if Stertzer, Dorros, Miller, and Jendersee had put the same financial and technical resources into ESS that they put into AVE, ESS could have been able to pay for the patent appeal. Instead, the defendants channeled their efforts into appropriating the Boneau stent to their own benefit at the expense of the plaintiffs.

246. Admit that Anwar suggested the number of AVE shares he should receive in exchange for his ESS shares.

RESPONSE: Anwar denied this request because Miller told Anwar the number of shares that AVE was willing to provide Anwar.

300. Admit that Anwar has stock holdings in companies that compete with AVE.

RESPONSE: Anwar objects to this request because it is vague, ambiguous, overly broad, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, Anwar admitted that he has stock holdings in companies other than AVE, and whether such companies compete with AVE is subject to interpretation.

302. Admit that Anwar has disposed of his AVE shares by selling them after his filing of this lawsuit.

RESPONSE: Anwar objects to this request because it is vague, ambiguous, overly broad, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, Anwar denied this request because he has not sold all of his AVE shares.

333. Admit that ESS lacked any sales history.

RESPONSE: Anwar objects to this request because it is vague, ambiguous, overly broad, and unduly burdensome. Subject to and without waiving these objections, Anwar denied this request because discovery has revealed that defendants concealed information about AVE's sales history and are in a superior position to know ESS's sales history.

334. Admit that ESS had no sales projections.

RESPONSE: Anwar objects to this request because it is vague, ambiguous, overly broad, and unduly burdensome. Subject to and without waiving these objections, Anwar denied this request because discovery has revealed that defendants concealed information about AVE's sales history and are in a superior position to know ESS's sales history.

335. Admit that in June 1993, AVE did not have a sales history regarding stents.

RESPONSE: Anwar objects to this request because it is vague, ambiguous, overly broad, and unduly burdensome. Subject to and without waiving these objections, Anwar denied this request because discovery has revealed that defendants concealed information about AVE's sales history and are in a superior position to know ESS's sales history.

341. Admit that in 1993 through November 1994, AVE's balloon sales far outstripped stent sales.

RESPONSE: Anwar objects to this request because it is vague, ambiguous, overly broad, and unduly burdensome. Subject to and without waiving these objections, Anwar denied this request because he does not believe the characterization is accurate for the entire time period listed.

347. Admit that at the time of the sale of ESS's assets to PET, there had been no sales of the ESS stent.

RESPONSE: Anwar objects to this request because it is vague, ambiguous, overly broad, and unduly burdensome. Subject to and without waiving these objections, Anwar denied this request because discovery has revealed that defendants concealed information about AVE's sales history and are in a superior position to know ESS's sales history.

359. Admit that information regarding the stock options of Jendersee and Miller was made available to Anwar before he agreed to his ESS-AVE stock exchange.

RESPONSE: Anwar objects to this request because it is vague, ambiguous, overly broad, unduly burdensome, and violates the best evidence rule in Tex. R. Civ. Evid. 1004. Subject to and without waiving these objections, Anwar denied this request because he was not aware of the extent of the stock holdings of Jendersee and Miller.

Respectfully submitted,

THOMPSON & KNIGHT, P.C.

By: Stephen C. Rasch by PBT

Timothy R. McCormick
Texas Bar No. 13463500

Steven K. Cochran
Texas Bar No. 04454000

Stephen C. Rasch
Texas Bar No. 16551420

William M. Katz, Jr.
Texas Bar No. 00791003

1700 Pacific Avenue, Suite 3300
Dallas, Texas 75201
214/969-1700
FAX: 214/969-1751

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via certified mail, return receipt requested, to counsel for defendants on the 19th day of March, 1998, as follows:

Charles W. Cunningham
McKool Smith, P.C.
300 Crescent Court #1500
Dallas, TX 75201

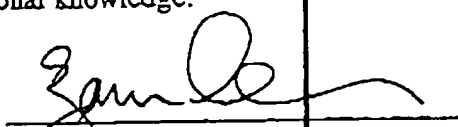


P. Blaine Grant

VERIFICATION

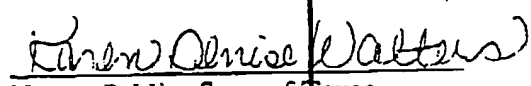
THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned Notary Public, on this day personally appeared Azam Anwar, M.D., who, upon his oath, deposed and said that he has read the foregoing Objections and Answers to Defendant John Miller's Second Set of Interrogatories, that the facts contained therein are true and correct and are within his personal knowledge.



Azam Anwar, M.D.

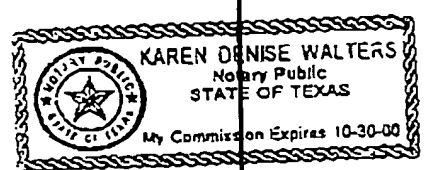
SUBSCRIBED AND SWORN TO before me on the 16th day of March, 1998, to certify which witness my hand and official seal.



Notary Public, State of Texas

My Commission Expires:

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